

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YIEN-KOO KING, NORTHWICH :
INVESTMENTS LTD., and SOON HUAT, :
INC. :
Plaintiffs, : Civ. Action No.: 1:14-cv-07694 (LJL)
: :
-against- : DECLARATION OF THOMAS B. KELLY
ANDREW WANG, SHOU-KUNG WANG, : IN SUPPORT OF DEFENDANT ANDREW
BAO WU TANG, JIAN BAO GALLERY, : WANG'S OPPOSITION TO PLAINTIFF'S
ANTHONY CHOU, CHEN-MEI-LIN, WEI : MOTION FOR PARTIAL
ZHENG, YE YONG-QING, YUE DA-JIN : SUMMARY JUDGMENT
and JOHN DOES 1-9, :
Defendants. :
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I, THOMAS B. KELLY, do hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an attorney admitted to practice law before this Court and a partner with the law firm Kasowitz Benson Torres LLP, counsel for defendant Andrew Wang (“AW” or “Defendant”) in the above-captioned action. I respectfully submit this declaration in support of Defendant’s opposition to Plaintiff’s Motion for Partial Summary Judgment. I am fully familiar with all matters set forth in this declaration.

PLAINTIFF’S FAILURE TO PURSUE DISCOVERY IN THIS ACTION

2. In the Declaration of Timothy Savitsky In Support of Plaintiff’s Motion For Partial Summary Judgment (“Savitsky Dec.”), Dkt. No. 203, Mr. Savitsky makes numerous representations regarding the absence of certain categories of documents from the “Record” in this action. *See* Savitsky Dec. ¶¶ 6-13.

3. In particular, Mr. Savitsky identifies as missing the following categories of documents:

- i. “[E]mails or written communications between either of the Wang Defendants and the purported buyers of Estate paintings between 2005 and 2009 or ‘Er Shi Fu’” (Savitsky Dec. ¶ 7);
- ii. “[E]mail communications between either of the Wang Defendants and Andrew’s accountant, Billie Wai” (Savitsky Dec. ¶ 8);
- iii. “[W]ire records demonstrating the sources from which Brown Raysman Millstein, Felder & Steiner, LLP as escrow agent, received the purchase prices for the Estate’s sales to ‘Wei Zheng’ and ‘Chen Mei-Lin’” (Savitsky Dec. ¶ 9);
- iv. “[E]mails or faxes referencing a person named ‘Raymond Ye’ and which are dated earlier than November 2014” (Savitsky Dec. ¶ 10).

4. Based on my review of the discovery requests served by Plaintiff in this action, I submit this declaration, in part, to advise the Court that:

- i. Plaintiff failed to seek discovery directly from Mr. Wei Zheng;
- ii. Plaintiff failed to seek discovery directly from Mr. Chen Mei Lin;
- iii. Plaintiff failed to seek discovery directly from Mr. Anthony Chou;
- iv. Plaintiff failed to seek discovery directly from Mr. Yue Da Jin;
- v. Plaintiff failed to seek discovery directly from Mr. Yong Qing Ye;
- vi. Plaintiff failed to seek discovery directly from Mr. Raymond Ye;
- vii. Plaintiff failed to seek discovery directly from Mr. Er Shi Fu;
- viii. Plaintiff failed to seek discovery directly from C.K. Lam & Co.;

- ix. Plaintiff failed to seek discovery directly from Ms. Billie Wai;
- x. Plaintiff failed to seek discovery directly from Brown Raysman Millstein Felder & Steiner, LLP.
- xi. Plaintiff failed to seek discovery directly from America Online;
- xii. Plaintiff failed to seek discovery directly from HSBC Bank.

EXHIBITS

5. Attached hereto as Exhibit 92 is a true and correct copy of the Affidavit of Andrew Wang, in Response to the Affirmation of Sam P. Israel after the Deposition of Wei Zheng (In Place of His Affirmation), dated April 16, 2015 bearing Bates numbers KING-SCT-000006497-6509.

6. Attached hereto as Exhibit 93 is a true and correct copy of excerpts from the January 7, 2015 deposition of Wei Zheng, bearing Bates numbers KING-SCT-000007120-7169.

7. Attached hereto as Exhibit 94 is a true and correct copy of excerpts from the June 18, 2019 deposition of Kenneth King taken in this action.

8. Attached hereto as Exhibit 95 is a true and correct copy of an email from AW to Elin Lake-Ewald, dated March 16, 2005, bearing Bates number EWALD_00000347.

9. Attached hereto as Exhibit 96 is a true and correct copy of an email from AW to Elin Lake-Ewald, dated March 16, 2005, bearing Bates number EWALD_00000214.

10. Attached hereto as Exhibit 97 is a true and correct copy of an email from AW to Martin Klein, dated May 25, 2005, bearing Bates numbers WANG002106-107.

11. Attached hereto as Exhibit 98 is a true and correct copy of an email from Martin Klein to AW, dated May 23, 2008, bearing Bates numbers WANG002103-105.

12. Attached hereto as Exhibit 99 is a true and correct copy of an email from AW to Martin Klein, dated March 21, 2005, bearing Bates numbers WANG002075-077.

13. Attached hereto as Exhibit 100 is a true and correct copy of an email from AW to Martin Klein, dated January 27, 2005, bearing Bates number WANG001947.

14. Attached hereto as Exhibit 101 is a true and correct copy of an email from Martin Klein to AW, dated May 6, 2008, bearing Bates numbers WANG002231-232.

15. Attached hereto as Exhibit 102 is a true and correct copy of the Response of Andrew Wang to Discovery Order of November 28, 2012, bearing Bates numbers King-SCT-000002881-887.

16. Attached hereto as Exhibit 103 is a true and correct copy of excerpts from the June 12, 2019 deposition of Alfreda Murck taken in this action.

17. Attached hereto as Exhibit 104 is a true and correct copy of an agreement between Cy Art and CC Wang, dated January 2, 2000, bearing Bates number PA-SCT-000003199.

18. Attached hereto as Exhibit 105 is a true and correct copy of the Expert Report of Kenneth Jay Linsner, dated October 11, 2019, submitted on behalf of Defendant in this action.

19. Attached hereto as Exhibit 106 is a true and correct copy of excerpts from the June 27, 2019 deposition of Yien-Koo King taken in this action.

20. Attached hereto as Exhibit 107 is a true and correct copy of excerpts from the June 20, 2019 deposition of Arnold Chang taken in this action.

21. Attached hereto as Exhibit 108 is a true and correct copy of excerpts from the June 28, 2019 deposition of Peter Schram taken in this action.

22. Attached hereto as Exhibit 109 is a true and correct copy of excerpts from the June 25, 2019 deposition of Andrew Wang taken in this action.

23. Attached hereto as Exhibit 110 is a true and correct copy of legal bills from the law firm Eaton & Van Winkle LLP, bearing Bates numbers KINGPROD5-00363-368.

24. Attached hereto as Exhibit 111 is a true and correct copy of a letter from Martin Garbus to Peter Schram, dated December 15, 2010, bearing Bates numbers KINGPROD5-00783-785.

25. Attached hereto as Exhibit 112 is a true and correct copy of excerpts from the December 17, 2013 deposition of Andrew Wang taken in the Surrogate's Court SCPA 2103 proceeding.

26. Attached hereto as Exhibit 113 is a true and correct copy of Yien-Koo King's Motion for Leave to Supplement the Petition, dated March 5, 2010, bearing Bates numbers AWSK_00007203-7259.

27. Attached hereto as Exhibit 114 is a true and correct copy of the Rebuttal Expert Report of Kenneth Jay Linsner, dated December 16, 2019, submitted on behalf of Defendant in this action.

28. Attached hereto as Exhibit 115 is a true and correct copy of the Verdict Sheet in connection with the matter of Estate of Chi-Chuan Wang, File No.: 2003-2550/B.

29. Attached hereto as Exhibit 116 is a true and correct copy of excerpts from the June 24, 2019 deposition of Shou-Kung Wang taken in this action.

30. Attached hereto as Exhibit 117 is a true and correct copy of excerpts from the June 14, 2019 deposition of Elin Lake-Ewald taken in this action.

31. Attached hereto as Exhibit 118 is a true and correct copy of the Expert Rebuttal Report of Patrick Regan, dated December 16, 2019, submitted on behalf of plaintiff in this action.

32. Attached hereto as Exhibit 119 is a true and correct copy of excerpts from the January 7, 2020 deposition of Patrick Regan taken in this action.

33. Attached hereto as Exhibit 120 is a true and correct copy of Appendix A to the Expert Report of Patrick Regan, dated October 11, 2019, submitted on behalf of plaintiff in this action.

34. Attached hereto as Exhibit 121 is a true and correct copy of the 2003 codicil of Chi-Chuan Wang, bearing Bates numbers AWSK_00003921-923.

35. Attached hereto as Exhibit 122 is a true and correct copy of the Response of the Public Administrator to Petition to Remove Preliminary Executor and Cross-Motion for Order of Contempt, dated August 7, 2006, bearing Bates numbers KINGPROD-00623-628.

36. Attached hereto as Exhibit 123 is a true and correct copy of the Affirmation of Services of Pryor Cashman LLP, dated August 28, 2014, bearing Bates numbers KING-SCT-000002733-743.

37. Attached hereto as Exhibit 124 is a true and correct copy of the Affidavit of Andrew Wang, dated August 4, 2006, bearing bates numbers KING-SCT-000010683-697.

38. Attached hereto as Exhibit 125 is a true and correct copy of excerpts from the 2017 probate trial transcript in connection with the administration of the Estate of Chi-Chuan Wang, bearing Bates numbers KING-SCT-000016603, 6628-6629, 7101.

39. Attached hereto as Exhibit 126 is a true and correct copy of the email from Yien-Koo King to Alfreda Murck, dated February 12, 2019, bearing Bates numbers KINGPROD300909-910.

40. Attached hereto as Exhibit 127 is a true and correct copy of the February 7, 2018 email from Yien-Koo King to Christie'sHK and Kenneth King, bearing Bates number KINGPROD2000816.

41. Attached hereto as Exhibit 128 is a true and correct copy of the email from Martin Klein to AW, dated May 19, 2008, bearing Bates numbers WANG002253-257.

42. Attached hereto as Exhibit 129 is a true and correct copy of excerpts from the November 18, 2003 deposition of Shou-Kung Wang, taken in the Probate Proceeding of the Will of Chi Chuan Wang A/K/A C.C. Wang.

43. Attached hereto as Exhibit 130 is a true and correct copy of a December 15, 2005 email from AW to Martin Klein, bearing Bates numbers WANG001892-893.

Dated: New York, New York
April 13, 2020

/s/ Thomas B. Kelly
Thomas B. Kelly